

REMARKS

This amendment is intended to place the subject application in condition for allowance. Specifically, Claim 24 was amended. In view of the amendment and the following reasoning for allowance, the applicants hereby respectfully request further examination and reconsideration of the subject application.

1. Interview Summary

A telephonic interview was held on April 10, 2008 between the undersigned, Examiner D. S. Warren, and his supervisor Examiner T. Haskins. During this interview, the 35 USC §102(b) rejection of the above-identified Office Action was discussed. The applicant's representative presented arguments for patentability that are now proffered in this response. The Examiners stated that these arguments would likely be persuasive.

2. The Section 101 Rejection of Claims 1-23

Claims 1-23 were rejected under 35 USC 101 as being directed toward non-statutory subject matter. In essence, the Examiner contends that the claims are directed toward what amounts to a computer program *per se*. The applicant respectfully disagrees.

The applicant is not claiming a computer program *per se* as contended in the Office Action. Generically, the preamble of independent Claim 1 reads:

"A computer-implemented process for..., comprising using a computer to perform the following process actions:"

Thus, the applicant is claiming a process implemented on a computer where the actions of the process are performed using the computer. This is statutory subject matter.

As stated in the MPEP (see Section 2106.01 (1) at Page 2100-18, Rev. 6, September 2007):

"Computer programs are often recited as part of a claim. USPTO personnel should determine whether the computer program is being claimed as part of an otherwise statutory manufacture or machine. In such a case, the claim remains statutory irrespective of the fact that a computer program is included in the claim. **The same result occurs when a computer program is used in a computerized process where the computer executes the instructions set forth in the computer program.**"

Clearly, in the case of Claims 1-13, the actions are being claimed as part of a statutory process-namely a process with actions that are performed using a computer.

With regard to Claims 13-23, generically, the preamble of independent Claim 13 reads:

"A system for..., comprising:
a general purpose computing device;
a computer program comprising program modules
executable by the computing device, wherein the computing device is
directed by the program modules of the computer program to,"

Thus, the applicants are claiming a computing device which is directed by program modules of a computer program. This is not a computer program per se, and is statutory subject matter.

As further stated in the MPEP (see Section 2106.01 (I) at Page 2100-18, Rev. 6, September 2007):

'When a computer program is recited in conjunction with a physical structure...USPTO personnel should treat the claim as a product claim.'

Clearly, in the case of Claims 13-23, the program modules of the computer program are recited in conjunction with a physical structure-namely a computing device.

Accordingly, given that Claims 1-23 are directed toward statutory subject matter, it is respectfully requested that the rejection be reconsidered.

3. Rejection of Claims 1, 3-5, 7-9, 13-19 and 21-24 Under 35 USC §102(b)

Claims 1, 3-5, 7-9, 13-19 and 21-24 were rejected under 35 USC §102(b) as being anticipated by Lin, U.S. Patent No. 5,812,286. The Office Action asserted that Lin discloses each and every element of the applicants' claimed invention. The applicants respectfully disagree.

The rejected claims include one feature reading "compar[ing] the color levels of the G and R color channel pair and the G and B color channel pair to determine if the color levels in each compared pair are balanced", and another feature reading "whenever the color levels of either compared color channel pair are determined not to be balanced, linearly expand[ing] the dynamic range of the color channel with the narrower range to match the channel with the wider dynamic range to a desired degree for each of said channel pairs found to be out of balance, to improve the color of improperly colored pixels of the image". The Lin reference does not teach this element. Rather the Lin reference explicitly teaches the color channels are handled separately. At no time is a pair of the color channels compared or expanded when a pair is found to be out of balance.

More particularly, Lin teaches the color hue is corrected as described at Col. 2, lines 52-62:

“Suppose the red component histogram has non-zero values between gray levels R_{\min} and R_{\max} . In Equation 1, the normalized red component R_{norm} after mapping is determined as follows:

$$R_{\text{norm}} = \frac{R_{\text{old}} - R_{\min}}{R_{\max} - R_{\min}} \quad (1)$$

where the R_{old} is the red component before mapping. The new green and blue components are calculated in a similar way.

It is clear from this quoted section that each color channel is normalized without regard to the other color channels. The “G and R color channel pair and the G and B color channel pair” are never compared “to determine if the color levels in each compared pair are balanced”, as claimed by the applicants. Additionally, since there is no comparison of color channel pairs in Lin, the reference can not possibly teach “linearly expanding the dynamic range of the color channel with the narrower range to match the channel with the wider dynamic range to a desired degree for each of said channel pairs found to be out of balance”.

A prima facie case of anticipation is established only when the Examiner can show that the cited reference teaches each of the claimed elements of a rejected claim. In this case, Lin lacks a teaching of the applicants’ claimed comparing and linearly expanding features. Thus, the rejected claims recite features that are not taught in cited art, and as such a prima facie case of anticipation cannot be established. It is, therefore, respectfully requested that the rejection of Claims 1, 3-5, 7-9, 13-19 and 21-24 be reconsidered based on the novel claim language exemplified in Claim 1:

“comparing the color levels of the G and R color channel pair and the G and B color channel pair to determine if the color levels in each compared

pair is balanced; and whenever the color levels of either compared color channel pair are determined not to be balanced, linearly expanding the dynamic range of the color channel with the narrower range to match the channel with the wider dynamic range to a desired degree for each of said channel pairs found to be out of balance”.

4. The Objections to Claims 2, 6, 10-12 and 20

Claims 2, 6, 10-12 and 20 were objected to as being dependent upon a rejected base claim. The Examiner stated that they would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. However, at this time the applicants respectfully decline to rewrite the objected to claims because it is their position that the independent claims from which these claims depend are patentable.

5. Rewritten Claim 24

Claim 2 was objected to in the Office Action as being dependent upon a rejected base claim. The Examiner stated that it would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. In response, the applicants have rewritten Claim 24, which claims subject matter similar to Claim 1, to include the subject matter of Claim 2. This in effect accomplishes the suggested rewriting. As such it is respectfully requested that amended Claim 24 be allowed.

6. Summary

In view of the amendments and arguments set forth above, the applicants respectfully submit that Claims 1-24 are in condition for allowance as they are

patentable subject matter, as well as novel over the cited art. Accordingly, further examination and reconsideration of these claims is respectfully requested and allowance of at an early date is courteously solicited.

Respectfully submitted,



Richard T. Lyon
Reg. No. 37,385
Attorney for applicant

LYON & HARR, LLP
300 Esplanade Drive
Suite 800
Oxnard, CA 93036
(805) 278-8855